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SEP 25 2018

WATER RESOURCES
WESTERN REGION

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

NOTICE OF PROTEST

RECEIVED

SEP 24 2018 ✓

DEPARTMENT OF
WATER RESOURCES

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested App. for Permit No. 63-34403 in the name of Cat Creek Energy LLC
2. Name of protestant Idaho Conservation League
3. Protestant's Representative for service (If different than protestant)
Marie Callaway Kellner
4. Service mailing address P.O. Box 844, Boise, ID 83701
5. Service telephone no. 208-345-6933 Ext 32 Email Address: mkellner@idahoconservation.org
6. Basis of protest (including statement of facts and law upon which the protest is based)

Please see Attachment A.

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? Please see Attachment A.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 20th day of September, 2018.

Idaho Conservation League

Protestant

Protestant's Representative

Marie Callaway Kellner

C105705

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
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FOR DEPARTMENT USE ONLY

Received by AW Date 9.24.18 Time 2:40
\$25.00 fee Received by AW # C105705 Date AW 9.24.18

Attachment A: 6. ICL Basis of Protest in App. for Permit No. 63-34403

Pursuant to Idaho Code § 42-203A(4), the Idaho Conservation League (“ICL”) respectfully submits this protest to Application for Permit No. 63-34403, in the name of Cat Creek Energy LLC, seeking 9,996 cfs for Diversion to Storage, 101,353 af for Power Storage, and 100,000 af for Power from Storage, all year-round uses, from the South Fork Boise River.

As allowed by I.C. § 42-203A(5)(b)-(e)&(g), ICL contends that: the water supply is insufficient for the purpose for which it is sought; that the application is made for delay or speculative purposes; that the applicant does not have sufficient resources with which to complete the work involved; that this proposed use of water is not in the local public interest as defined in I.C. § 42-202B(3); and, to the extent that any water will be consumptively lost to the basin of origin, that it will adversely affect the local economy of the watershed within which the source of water for the proposed use originates.

The application seeks water without demonstrating that the water is available. Related, the application seeks to remove water from the South Fork Boise River which is not only an important recreational fishery in Idaho, but also critical habitat for bull trout, a species protected by the federal Endangered Species Act. Moreover, water diverted up and out of Anderson Ranch Reservoir on a potential daily basis at a rate of 9,996 cfs poses an extreme hazard to all fish within the reservoir.

The application does not include a water availability analysis, engineering or other project design information, cost estimates, nor does it include a narrative explaining this unique proposal. For these reasons, ICL is unable to determine that the application is not speculative or that the applicant has sufficient financial resources to complete it.

Additionally, the application proposes to utilize and, to some extent, remove water from the most populated watershed in Idaho to a different watershed. While the applicant has reached out to ICL, the application makes no mention of coordinated efforts with or support of the numerous impacted downstream municipalities, businesses, irrigated agricultural community, other interested stakeholders or the citizens of that watershed of origin. As this proposed use stands to injure the all of these entities, it is inappropriate and should be denied.

ICL reserves the right to amend this protest on additional grounds as they may be discovered.

Relief Sought

For the foregoing reasons, ICL requests that Application for Permit No. 63-34403 be denied or, if possible, conditioned to mitigate the impacts identified above.